

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 954

INTRODUCER: Fiscal Policy Committee; Criminal Justice Committee; and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 954 repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. Section 843.23, F.S., makes it a third degree felony for a person to intentionally and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that is being worn as described above.

The bill clarifies that the Department of Corrections (department) may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The bill will have an insignificant prison bed impact on the department. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016.

II. Present Situation:

Electronic monitoring devices are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control,¹ or conditional release² (community supervision).

Judges generally have the discretion to require criminal defendants and offenders on community supervision to wear an electronic monitoring device.³ Judges are required to impose electronic monitoring in certain instances, for example when offenders placed on community supervision for specified sexual offenses.⁴ The Florida Commission on Offender Review also has the authority to determine the conditions of release, including ordering an offender to wear an electronic monitoring device when an offender is released on conditional release, control release, parole, or conditional medical release.⁵

Section 948.11, F.S., provides that the Department of Corrections (department) may, at its discretion, electronically monitor an offender sentenced to community control. Any offender who violates the terms of community control and is restored to community control may be supervised by an electronic monitoring device.⁶ However, the department does not exercise such authority because courts have held that an offender's community control may not be revoked for noncompliance with electronic monitoring when such monitoring was ordered by the department instead of a judge.⁷

Section 948.11(7), F.S., makes it a third degree felony⁸ for a person to intentionally alter, tamper with, damage, or destroy any electronic monitoring equipment required pursuant to a court or Florida Commission on Offender Review order, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs.

Section 948.11(7), F.S., does not make it a crime to circumvent the operation of the electronic monitoring device unless the circumvention involves altering, tampering, damaging, or destroying an electronic monitoring device. It is also not a crime to solicit another person to remove, destroy, alter, tamper with, damage, or circumvent an electronic monitoring device.

¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Section 948.001(3), F.S.

² Conditional release requires mandatory postrelease supervision for specified inmates. The conditions of supervision for conditional releasees are established by the Florida Commission on Offender Review. Conditional releasees are supervised by the Department of Corrections probation officers. Section 947.1405, F.S.

³ See ss. 907.041(4)(b), 947.1405, 948.101(1)(d), and 948.30(2)(e), (3) F.S.

⁴ Section 948.30(2)(e)(3), F.S.

⁵ Section 947.13, F.S.

⁶ Section 948.11(2), F.S.

⁷ *Carson v. State*, 531 So.2d 1069 (Fla. 4th DCA 1988); *Anthony v. State*, 854 So.2d 744, 747-748 (Fla. 2d DCA 2003).

⁸ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

According to the department there were 4,458 offenders on electronic monitoring.⁹

Offenders Tracked by Electronic Monitoring December 2015			
Supervision Type*	Sex Offenders**	Others	Total
Community Control	164	965	1,129
Post Prison	215	149	364
Probation	2,352	613	2,965
Total Active Global Positioning	2,731	1,727	4,458
* Includes Active and Active-Suspense offenders.			
**Based on primary offense.			

III. Effect of Proposed Changes:

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. Section 843.23, F.S., makes it a third degree felony for a person to intentionally and without authority to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that is being worn as described above.

The bill defines “electronic monitoring device” to include any device that is used to track the location of a person.

The bill clarifies that the department may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The bill is effective October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ Department of Corrections, Florida’s Supervised Population Monthly Status Report, *Table 2: Offenders Tracked by Electronic Monitoring – December 2015*, available at <http://www.dc.state.fl.us/pub/spop/2015/12/tab02.html> (last visited February 12, 2016).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that that the bill as originally filed would have an insignificant prison bed impact on the department (an increase of ten or fewer beds). It does not appear that the amendments made to the bill would alter that determination.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 843.23 of the Florida Statutes.

This bill substantially amends section 948.11 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on February 17, 2016:

The Committee Substitute corrects a drafting error.

CS by Criminal Justice on January 25, 2016:

The Committee Substitute clarifies that any person who intentionally removes, destroys, alters, tampers with, damages or circumvents the operation of an electronic monitoring device can be prosecuted under the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
